

REMARKS

In response to the non-final Office Action mailed October 18, 2007, please amend the above-identified application as follows.

Applicants request reconsideration of the above-identified application. Claims 1, 2, 6-14, and 28-45 were pending in this application, with Claim 45 being withdrawn from consideration. Claims 1, 2, 10, 14, 28, 30, 32, 33, 36, 38, 39, and 41 have been amended; Claims 12, 13, 31, 37, and 42 have been canceled; and new Claims 46-48 have been added.

Claims 1, 2, 6-14, and 28-44 have been rejected. Applicants submit that all claims are now in condition for allowance. Accordingly, reconsideration and allowance of all pending claims is respectfully requested.

Declaration

The declaration has been indicated as defective. Applicants respectfully submit that in a recent Notice issued by the USPTO, the Office agreed to accept declarations with "material to examination" language filed prior to June 8, 2008, therefore obviating this rejection.

Objection to the Specification

The specification was objected to for an informality. An appropriate correction has been made.

Claim Rejections Under 35 U.S.C. § 112

Claims 2, 10, 28-40, and 42 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the Office Action states the term "non-penetrating perforations" is indefinite.

Applicants respectfully submit that the term non-penetrating perforations is not indefinite. In that regard, applicants note the description at page 5, lines 8-10, of the

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specification: "The score lines or non-penetrating perforations do not cut completely through the thickness of the closure, but are only partly cut into the closure material." Therefore, the term "non-penetrating perforations" is directed to perforations that only cut through a portion of the thickness of the closure. Nonetheless, applicants have amended the claims to remove the term "non-penetrating perforations," thereby obviating this rejection.

In addition, Claims 31 and 37 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Office Action states that the language "two or more rows of non-penetrating perforations aligned along the rows" adds no structure to the claims. Applicants respectfully submit that Claims 31 and 37 have been canceled, thereby obviating the rejection.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1, 2, 6, 8, 11-13, 28-34, 38-40, 42, and 43 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 3,265,287, issued to Hovland (hereinafter "Hovland"). Applicants respectfully disagree.

Anticipation requires the presence of each and every claim limitation in a single prior art reference.

Claim 1, as currently amended, generally recites a container including a container body defining a cavity and a tearable flap connected to the container body. The flap includes a first side having areas of reduced thickness defined in a row or line extending approximately from length's end to length's end of the flap, and a second side having a continuous film material, wherein the flap is a plastic film that does not include areas made of fibers.

Claim 28, as currently amended, generally recites a tearable closure for opening a sealed container including at least first and second films bonded together, wherein the first and second films are polymer films. The first film includes rows of perforations or score lines that extend

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through the thickness of the first film across the tearable closure, and the second film is a continuous film material, and wherein the closure does not include areas made of fibers.

Claim 32, as currently amended, generally recites a container with a tearable closure including a container body defining a cavity and a tearable closure connected to the container body. The tearable closure includes a polymer film having first and second sides and a thickness extending therethrough, wherein the first side has score lines that extend through a portion of the thickness of the film and the second side does not include score lines, and wherein the closure does not include areas made of fibers.

Claim 38, as currently amended, generally recites a container including a container body defining a cavity and a tearable flap connected to the container body. The flap includes a first translucent film and a second opaque film, wherein the first translucent film has perforations that extend completely through the thickness of the first translucent film and the second opaque film does not have perforations. The first film includes two or more rows of perforations extending from length's end to length's end of the flap. The flap is a plastic film that does not include areas made of fibers.

Hovland is generally directed to a hermetically sealed cigarette package with an opening feature. Referring to Figures 1 and 2, the package is made from a composite multi-ply material which has a line of weakness, preferably a line of perforations 2 passing through at least one but not all of the plies of the material. The multi-ply material has a plurality of layers of paper and a plurality of layers of polymeric resin plies. For example, as seen in Figure 2, the outer perforated layer of the wrapper includes a paper layer 11 having a coating 10 of polyethylene. The inner imperforate layer of the wrapper includes a layer of polyethylene 12 adhered to the inner side of the paper layer 11, a thin coating of wax 13 on the inner polyethylene layer 12, another polyethylene layer 14, and another layer of paper 15.

Hovland fails to teach or suggest a flap or closure for a container, wherein the flap or closure is made from a plastic or polymer film that does not include areas made of fibers. Moreover, Hovland fails to teach or suggest that the perforations or score lines extend approximately from length's end to length's end of the flap. Therefore, for at least these reasons Hovland does not anticipate the claims at issue. Accordingly, applicants request withdrawal of these claim rejections.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1, 2, 6-8, 10-14, 28-30, 32-36, 38, 43, and 44 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,834,552, issued to Makowka (hereinafter "Makowka"), in view of Hovland. In addition, Claims 9, 31, 37, 39, 40, and 42 stand rejected as obvious over Makowka in view of Hovland, and further in view of U.S. Patent No. 3,650,463, issued to Christiansen et al. (hereinafter "Christiansen"). Further, Claim 41 stands rejected as being obvious over Makowka in view of Hovland, and further in view of U.S. Patent No. 4,607,749, issued to Jacob (hereinafter "Jacob"). Applicants respectfully disagree.

To establish a *prima facie* case of obviousness, the cited prior art references must teach or suggest all of the claim elements. In addition, there must be some apparent reason, either in the references or in the knowledge of one skilled in the art, to modify the reference or to combine the elements of multiple references with a reasonable expectation of success.

Makowka is generally directed to a tamper-evident seal for an envelope and a method of making the same. The Examiner cites Makowka as teaching an envelope having a cavity and a flap closure formed from polyethylene film. The Examiner admits on page 4 of the Office Action that Makowka does not disclose a tearable closure or two three-layer co-extruded polyethylene films.

Christiansen is generally directed to an opening strip for a self-contained envelope. Referring to FIGURES 1 and 2, the opening strip includes two rows of perforations 8 extending fully through the thickness of the closure flap 5 of the envelope and a pull tab 12.

Jacob is generally directed to an easy open paper envelope having an array of cut scores 22 such that a wall of the paper envelope may be torn in a controlled manner.

None of the cited references cure the deficiencies of Hovland stated above. In that regard, none of the references, whether cited alone or in combination, teach or suggest a flap or closure for a container, wherein the flap or closure is made from a plastic or polymer film that does not include areas made of fibers. Therefore, for at least these reasons the cited references do not render obvious the claims at issue. Accordingly, applicants request withdrawal of these claim rejections.

New Claims 46-48

New Claims 46-48 have been added. Applicants respectfully submit that these new claims do not present any new subject matter and are also in condition for allowance. Claim 46, like Claim 45, is directed to the non-elected species.

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CONCLUSION

In view of the foregoing remarks, applicants submit that all claims are in condition for allowance. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Emily C. Peyser", written in a cursive style.

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